

BOARD OF COUNTY COMMISSIONERS

LINCOLN COUNTY

STATE OF MONTANA

ANTHONY J. BERGET, Commissioner  
DISTRICT NO. 1, LIBBY

JOHN C. KONZEN, Commissioner  
DISTRICT NO. 2, TROY

MARIANNE B. ROOSE, Commissioner  
DISTRICT NO. 3, EUREKA

TAMMY D. LAUER  
CLERK OF THE BOARD AND COUNTY RECORDER

September 18, 2009

Carol Rushing  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
EPA Region 8 Office  
1595 Wynkoop Street  
Denver, CO 80202-1129

RE: Agency Cooperation on Libby Asbestos Superfund Site and Request for  
Extension of the Comment Period for the Proposed Plans on OU-1 and OU-2

Dear Ms. Rushing:

I write to you as Chairman and on behalf of the City-County Board of Health for Lincoln County ("Board of Health"). The Board of Health is the public agency charged with the protection of public health in all of Lincoln County, Montana, including the cities of Libby and Troy. Under Mont. Code Ann. § 50-2-116, the Board of Health must identify conditions of public health importance and protect the public from such conditions, including removal of contaminants adverse to public health, inspect conditions of public health, and bring and pursue actions necessary to abate, restrain, or prosecute violations of public health laws, rules, and local regulations.

In addition, § 50-2-116, Mont. Code Ann., empowers the Board of Health to accept and spend funds from federal and state entities and adopt regulations relating to communicable diseases, removal of contaminants, and institutional controls, amongst many other powers. Finally, the Board of Health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary.

As you can imagine, the U.S. Environmental Protection Agency's ("EPA's") removal and remedial action efforts at the Libby Asbestos Superfund Site is a serious concern for the Board of Health. To be blunt, the citizens of Lincoln County and their local governments have not always had confidence in EPA and its removal efforts at the Libby Asbestos Superfund Site. However, the past is the past, and the Board believes the best way to serve the public and ensure that its health is protected, now and in the future, is to work

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closely and cooperatively with EPA as EPA moves from the temporary removal actions of the last ten years to the remedial actions designed to be the permanent remedy.

In that vein, the Board of Health understands EPA will eventually want the Board to implement potentially county-wide public health regulations as institutional controls to ensure the protection of the public and the long term integrity of the final remedy of the various Operable Units, particularly OU-4 (City of Libby) and OU-7 (City of Troy). Please confirm if that is the case and if so, the Board of Health welcomes the opportunity to cooperate with EPA toward achieving that goal.

Cooperation is, of course, a two-way street. If the Board is going to consider implementing and enforcing regulations as institutional controls supporting the remedy(s) EPA selects for the Libby Asbestos Site, the Board will need a high degree of comfort with EPA's remedy(s). This can only come by working closely with EPA in the development of the remedial action plans for each of the OUs.

Now, the Board understands that, in the end, EPA must exercise its independent regulatory discretion under CERCLA when selecting and implementing the remedial action plans for each OU within the Libby Asbestos Site. Just as I am sure EPA understands that, in the end, the Board must exercise its independent regulatory discretion under Montana Public Health Statutes in adopting and implementing county health ordinances that might be used as institutional controls. However, I am confident that if the Board and EPA are able to work closely together, giving due consideration to the concerns of the other agency, our mutual goal of protecting the future health of the citizens of Lincoln County can be met.

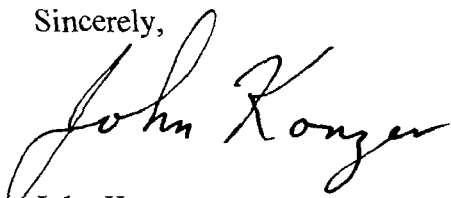
An important element will be how the implementation and enforcement of any county health regulations/institutional controls will be funded. The Board of Health, Lincoln County and perhaps the County Attorney's office will incur additional costs to implement and enforce any public health regulations to be used as institutional controls required by the final remedy(s) EPA selects for the Site. The Board understands that that funding will come from EPA and the settlement funds EPA received from W.R. Grace. If that is not the case, please let the Board know.

I understand you and Mathy Stanislaus, EPA's Acting Assistant Administrator, Office of Solid Waste and Emergency Response, will be visiting Libby on September 23 and meeting with the Board of Health at 10:00 a.m. that day. While a prior commitment takes me to Helena that day, it will nonetheless be an excellent opportunity for the rest of the Board and EPA to discuss how each can work closely together in developing the final remedial actions at the various OUs of the Site and how any county health regulations/institutional controls might be developed. The rest of the Board looks forward to meeting with you.

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As a final note, the comment period for the recently published Proposed Plans for OU-1 and OU-2 is set to run October 16, 2009. On behalf of the Board, I request an extension of that comment period until December 16, 2009.

Sincerely,

A handwritten signature in black ink, reading "John Konzen". The signature is fluid and cursive, with the first name "John" and last name "Konzen" clearly legible.

John Konzen,  
Chairman City-County Board of Health for  
Lincoln County, Montana

cc: Victor Kettlapper, USEPA  
Rebecca Thomas, USEPA  
Ted Linnert, USEPA  
Members of the Board of Health

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